QUESTIONS PRESENTED

1. Is a union member, who sues his union and its officers for money damages for violations of his free speech rights under Title I of the Labor-Management Reporting and Disclosure Act, entitled to a trial by jury under the Seventh Amendment?

2. Does section 301 of the Labor-Management Relations Act create a federal cause of action under which a union member may sue his union for a violation of the union constitution?

PARTIES TO THE PROCEEDING

In addition to the parties listed in the caption, the parties to this proceeding are respondents R.L. "Buck" Wooddell and Gregory Sickles.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

CASES:

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-967

GUY WOODDELL, JR.,
Petitioner,
v.
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENTS

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Sixth Circuit is reproduced at pages A-1 to A-21 of the Appendix to the Petition for Writ of Certiorari ("Pet. App. A-1 to A-21"). The unreported opinions of the United States District Court for the Southern District of Ohio are reproduced at Pet. App. A-24 to A-36, A-37 to A-41, and A-42 to A-63.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion on June 27, 1990. That court denied a timely petition for rehearing on September 4, 1990. Pet. App. A-22.

This Court has jurisdiction under 28 U.S.C. § 1254(1). Certiorari was granted on February 19, 1991.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution provides:

Trial by jury in civil cases

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, provides, in relevant part:

Suits by and against labor organizations

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 101(a)(2) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411(a)(2), provides:

> Freedom of speech and assembly.
>
> Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

Section 102 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 412, provides, in relevant part:

> Civil action for infringement of rights; jurisdiction. Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.

STATEMENT

A. Facts.

Petitioner, Guy Wooddell, Jr., is the brother of respondent R.L. "Buck" Wooddell. Joint Appendix ("JA") 7. Respondent Gregory Sickles is the son-in-law of respondent Wooddell. Pet. App. A-2. Petitioner Wooddell is a member of respondent International Brotherhood of Electrical Workers, Local Union No. 71 ("Local 71"). JA 7. His brother Buck, in the period relevant to this lawsuit, was the president of Local 71. Respondent Sickles has been the Business Manager of Local 71 since October, 1985. JA 7.

The trouble between the relatives, insofar as it is alleged by the petitioner, began in January, 1986 when petitioner Wooddell opposed a union dues increase. In prior years, petitioner Wooddell claims to have opposed the selection of various Local 71 officers, including the selection of respondent Sickles as the Local 71 Business Manager. A telephone call took place between the brothers in which respondent Buck Wooddell recalls his brother Guy accusing him of bribing an employer, and telling respondent that there would be an attorney "living in my

[Buck's] house one of these days." Petitioner alleges that his brother Buck told him that if he persisted in making false accusations against him and Local 71, he would be "finished" in the union, Pet. App. A-2, A-3.

Shortly after this telephone conversation, respondent Buck Wooddell filed what he considered informal charges against his brother Guy, seeking to have petitioner appear before the local's executive board in order to explain his disagreements with the local union. On February 24, 1986, the local sent petitioner a letter directing him to appear before the local executive board on March 14, 1986, and informing him that he could bring witnesses and a fellow union member to act as his counsel. Petitioner after consulting an attorney, appeared without counsel at the meeting. The charges were read, petitioner was asked if he was guilty of the charges, and petitioner said "no." The two brothers then began shouting at each other, and petitioner left. No actual decision was rendered on the charges although respondents agreed before trial that no action would be forthcoming. Pet. App. A-3, A-14.

Petitioner alleges that, following this incident, respondents discriminated against him with respect to job referrals. The referral system operated by priority groups, with Group I having the highest priority, Group II the next highest, etc. Each group had its own criteria for inclusion. In May of 1986, the local union re-classified petitioner from Group I to Group II on the basis that petitioner had not worked in the trade the requisite hours in the preceding three years to remain in Group I. Pet. App. A-4, A-5.

Between January and July, 1986, the local did not succeed in making any job referrals to petitioner. The local's records shows that it attempted to reach petitioner on July 25, 1986 and July 28, 1986 in order to make a referral. On July 29, 1986, a message was left with petitioner's wife, but petitioner did not return the call.

In August of 1986, petitioner accepted a job referral from the local, worked only two days, and quit, claiming that the job was unsafe. By this time, he had filed his lawsuit. Pet. App. A-5.

Petitioner was referred to yet another job by the local in October, 1986. Then, in February, 1987, when attempting to refer petitioner to another job, it was discovered that petitioner had accepted a different job in the state of New Jersey. Pet. App. A-5-6.

B. Proceedings Below.

Petitioner filed this action in the United States District Court for the Southern District of Ohio, Eastern Division, on July 25, 1986. He alleged that he had been retaliated against for engaging in internal political activity protected by the Bill of Rights of the Labor Management Reporting and Disclosure Act ("LMRDA" or "Landrum Griffin Act"), 29 U.S.C. § 411. He also claimed that the respondents violated the constitution of the International Brotherhood of Electrical Workers, asserting that this document is a contract under which he can sue pursuant to § 301 of the Labor Management Relations Act ("LMRA" or "Taft- Hartley Act"), 29 U.S.C. § 185, ("§ 301") or under state law.[1] He alleged that Local 71 breached its collective bargaining agreement in violation of the LMRA and state law, and that the union breached its duty of fair representation in violation of LMRA § 301. He also alleged that he was deprived of the right to a full and fair hearing under Title I of the LMRDA, and that respondents were guilty of intentional infliction of emotional distress. Pet. App. A-6, JA 16. It is the petitioner's claim that Local 71 breached its

[1] Petitioner has not sought review of the findings of the Sixth Circuit Court of Appeals that his union constitution claims under state law are preempted by federal labor law.

constitution in violation of § 301 that is now before the Court.

The respondents moved for summary judgment, and, in March 1988, the district court granted summary judgment on the § 301 breach of contract claim and to the individual respondents on the § 301 fair representation claims. The case was then scheduled for trial in August 1988. Pet. App. A-7.

In July 1988, the respondents again moved for summary judgment on the remaining claims; the trial, meanwhile, was continued. In October 1988, after the submission of additional authorities and a response by the petitioner, the court issued an order granting summary judgment to the respondents on the rest of the claims. Pet. App. A-7.

The Sixth Circuit Court of Appeals affirmed in part and reversed in part in an unpublished decision. It reversed the district court's dismissal of petitioner's claim that he was retaliated against because of his exercise of free speech under the LMRDA through the deprivation of work opportunities. In all other respects, including the denial of a jury trial, it affirmed the decision of the district court. Pet. App. A-20, A-21.

The court of appeals also rejected the petitioner's § 301 claim under the union constitution. It noted that the holding of the Court in *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981) was limited to suits brought under § 301 by one labor organization against another alleging violations of the union constitution. The court of appeals rejected an argument that the reasoning of *Plumbers* warranted a change in the prior holding in *Trail v. Teamsters*, 524 F.2d 961 (6th Cir. 1975). In *Trail*, the Sixth Circuit Court of Appeals held that a union member cannot sue his union under § 301 on a claim for an alleged

violation of the union constitution. The court of appeals declined to overrule *Trail*. Pet. App. A-11, to A-13.[2]

SUMMARY OF ARGUMENT

I. Respondents concede that under this Court's recent decision in *Teamsters Local 391 v. Terry*, —— U.S. ——, 58 L.W. 4345 (March 20, 1990), petitioner is entitled to a jury trial and that *Terry* requires that the court of appeals' contrary conclusion in this regard be reversed.

II. Section 301 of the LMRA does not explicitly provide for suits by individuals against their unions based upon a union constitution. Federal involvement in the interpretation of union constitutions did not come about until passage of the LMRDA in 1959.

There is a fundamental difference between a contract between two parties explicitly stated in a collective bargaining agreement, and contractual relationships implied by law whose terms, *inter alia*, may be gleaned from provisions of a union constitution. At the time of the passage of the LMRA, union constitutions were recognized as embodying terms of three separate contractual relationships: a contract of association among the members *inter se*, a contract between a member and his union, and a contract between a national union and its local unions. The Court has recognized the implicit nature of such contracts, and that aspects of a union constitution may constitute one or the other of these relationships. The lack of legislative history regarding the "between any

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[2] The Court of Appeals also found that the union constitution does not form a contract between the individual and his union. (Pet. App. A-15). While petitioner has not sought review of this determination, respondents concede that the conclusion of the court of appeals is inconsistent with the Court's holding in *Machinists v. Gonzales*, 356 U.S. 617 (1958). The court of appeals also held, however, that if such a contract were formed, the claims raised in this case would be preempted by federal labor law. Pet. App. A-15. Petitioner has not sought review of this determination.

such labor organizations" language of § 301, along with the LMRA's legislative history suggesting an intention not to interfere in the internal affairs of unions, demonstrates that Congress did not intend to create a federal cause of action for suits by union members on their contracts with their union. While Congress could have concluded that enforcement of the terms of union constitutions setting out the relationship between a parent union and its affiliated locals may contribute to industrial stability, no such broad conclusion could be reached regarding individual members suing on the union constitution. With passage of the LMRDA, Congress specified those areas of the contractual relationships between a member and his union which it wished to federalize. If an individual may sue the union as an entity on its constitution, there is no reason why he or she may not sue the union's officers or fellow members on the same basis, federalizing claims that do not even bear a remote relationship to the industrial stability that the Taft-Hartley Act was intended to promote.

ARGUMENT

I. RESPONDENTS CONCEDE THAT UNDER THIS COURT'S DECISION IN *TEAMSTERS LOCAL 391 v. TERRY* PETITIONER IS ENTITLED TO A JURY TRIAL AND THAT *TERRY* REQUIRES THAT THE COURT OF APPEALS' CONTRARY CONCLUSION IN THIS REGARD BE REVERSED

Petitioner contends that the decision of the court of appeals denying petitioner a jury trial on his LMRDA damage claims conflicts with this Court's recent decision in *Teamsters Local 391 v. Terry*, —— U.S. ——, 58 L.W. 4345 (March 20, 1990). *Terry* holds that under the Seventh Amendment a plaintiff in a duty of fair representation action against a union who is seeking money damages is entitled to a jury trial.

For the reasons that follow, respondents have come to the conclusion that *Terry* governs this case and that the

court of appeals' conclusion that petitioner is not entitled to a jury trial cannot stand. Since there is no longer an adversarial contest in this regard, respondents respectfully suggest that petitioners are entitled to a summary reversal on the jury trial issue, *albeit on that issue alone.*

(a) Briefing and argument to the court of appeals in this case had been completed prior to *Terry*. Thus, the question of *Terry*'s application to the LMRDA damages claims presented here was never fully explored. Indeed, the court of appeals decisions in this case came out on the heels of this Court's *Terry* decision, and the court below did not cite or discuss *Terry*.

On these and other bases, our brief in opposition urged that *Terry*'s application to LMRDA cases was not an issue worthy of this Court's plenary consideration at this time, particularly since no other court of appeals had yet reached the issue.

(b) Now, however—upon further study for purposes of preparing this brief on the merits—we have concluded that whatever the correct result under pre-*Terry* law, *Terry does indeed control this case. Terry*'s reasoning begins from the principle that "[g]enerally, an action for money damages," even if "representing backpay and benefits," is an action for *legal relief* that generates a right to a jury trial. 58 L.W. at 4348. The *Terry* Court then concluded that in light of its prior rulings in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), *Tull v. United States*, 481 U.S. 412 (1987) and *Curtis v. Loether*, 415 U.S. 189 (1974), an employee's damages claim against a union for breach of its duty of fair representation has "none of the attributes that must be present before [a court] will find an exception to the general rule." 58 L.W. at 4348. It follows from *Terry*, *Granfinanciera*, *Tull* and *Curtis* that here too the general rule that a plaintiff who brings an action for money damages has a right to a jury trial—rather than any of the exceptions to that rule—applies. Respondents thus agree

that petitioner is entitled to a jury trial of his LMRDA damage claims and that the court of appeals erred in denying petitioner a jury trial.

Accordingly, the remainder of this brief will be devoted to petitioner's additional claim that § 301 of the Labor Management Relations Act creates a federal cause of action for any claims by a union member against his union for breach of the union's constitution. *See* 29 U.S.C. § 185.

II. SECTION 301 OF THE LABOR-MANAGEMENT RELATIONS ACT DOES NOT CREATE A FEDERAL CAUSE OF ACTION UNDER WHICH A UNION MEMBER MAY SUE HIS UNION FOR AN ALLEGED VIOLATION OF THE UNION CONSTITUTION.

A. The Plain Language of § 301 Does Not Expressly Refer To The Enforcement Of Union Constitutions By Union Members.

Neither the specific language of § 301 nor the legislative history of the clause in question granted federal courts jurisdiction in an action where a union member has sued his union for a violation of the union constitution. In our analysis "[w]e begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Comm'n v. GTE Sylvania*, 447 U.S. 102, 108 (1980).

The statutory language which controls the issue in this case is that of § 301(a) of the Labor Management Relations Act of 1947:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act, or between any such labor organizations, may

> be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

We are here particularly concerned with that portion of § 301(a) which grants jurisdiction over "suits for violations of contracts * * * between any such labor organizations" (i.e., "labor organizations representing employees in an industry affecting commerce * * * ").

This Court, in an earlier decision on union constitutions, interpreted the language literally in finding that a subordinate labor organization could sue its international union on its constitution under § 301. *Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981). There the Court utilized a literal reading of the clause "between any . . . labor organization" to allow the maintenance of the action between the international union and its local union, as labor organizations.

No reading of § 301, however, supports a conclusion that suits may be brought on the implied contact between unions and their members. The failure to include such a cause of action in § 301 is not remedied by the legislative history of the clause. As this Court has noted, there is no legislative history here:

> "[T]here is no specific legislative history on that phrase to explain what Congress meant. The provision for suits between labor organizations was inserted late in the bill's history by the House-Senate Conference Committee. H.R. Rep. No. 510, 80th Cong., 1st Sess., 65-66 (1947); N.L.R.B., 1 Legislative History of the Labor Management Relations Act, 1947, at 1535, 1543; see *Retail Clerks v. Lion Dry Goods, Inc.*, 369 U.S. 17, 26, 49 LRRM 2670 (1962). The Conference Report and postconference debates contain no explanatory remarks about this addition. The only reference to the clause was made in a summary of the Act prepared by Senator Taft and in-

> serted in the Congressional Record, which merely recited: "Section 301 differs from the Senate bill in two respects. Subsection (a) provides that suits for violation of contracts between labor organizations, as well as between a labor organization and an employer, may be brought in Federal courts." 93 Cong. Rec. 6445 (1947), 2 Leg. Hist., at 1543.

Plumbers at 622-23.

To fill this void, petitioner has claimed that a union member is like a third party beneficiary to an agreement between two labor organizations, mirroring the analysis of a union member suing on a collective bargaining agreement in *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962) (Pet. Br. at pp. 22-23). This analogy fails, as we explain *infra* in our discussion about the nature of a union constitution.

B. Prior To The Landurum-Griffin Act, No Federal Statute Regulated Any Aspect Of Union Constitutions.

Not only does the legislative history of § 301(a) fail to support petitioner's extension of jurisdiction, the Congressional purpose of Taft-Hartley shows that petitioner's argument is misplaced. Union constitutions first were regulated by the Landrum-Griffin Act, 29 U.S.C. § 401 *et seq.*, not by Taft-Hartley.

In 1947, Congressional concern was with collective bargaining agreements and their enforceability, not with union constitutions. Congress' "principal motive" in enacting § 301, to provide a forum for the enforcement of collective bargaining agreements (*Dowd Box v. Courtney*, 368 U.S. 502, 510 (1962)), did not apply to individual union members rights under union constitutions. At that time, the prevailing view was that the state courts were available to enforce the provisions of a union constitution, whether brought by a union member or by a subordinate union body. *Machinists v. Gonzales*, 356 U.S. 617, 618-

619 (1958); *Plumbers* at 615; and *NLRB v. Allis-Chalmers*, 388 U.S. 175, 177-78, n.2 (1967). In contrast to collective bargaining agreements, the enforceability of a union constitution was "not a part or parcel of the abuses against which" § 301 was aimed. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 458 (1957).

The passage of the Landrum-Griffin Act in 1959 confirms "that union self-government was not regulated in 1947." *Allis-Chalmers Mfg. Co.*, at 194.[3] At that time, union constitutions were brought to the forefront of Congressional regulation. The 1959 Act, which was "the first comprehensive regulation . . . of internal union affairs," reflected Congress' "long-standing policy against unnecessary intrusion into internal union affairs." *Wirtz v. Local 153 Glass Bottle Blowers Ass'n.*, 389 U.S. 463, 470-471 (1968). Congress intended to allow "unions great latitude in resolving their own internal controversies" (*Calhoon v. Harvey*, 379 U.S. 134, 140 (1964)) without unwarranted interferences by the federal judiciary. *Boilermakers v. Hardeman*, 401 U.S. 233, 243-245 (1971).

This was also the view of contemporary legal scholars. Professor Cox wrote "the act is the first major step in the regulation of the internal affairs of labor unions. . . . Previously national policy was confined to relationships between management and union." Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 852.

The competence of state courts to interpret union constitutions was expressly preserved by Sections 103, 403

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[3] Although courts are reluctant to infer legislative history from the actions of subsequent legislatures, as this Court has observed, courts "may properly take into account the later (Landrum-Griffin) Act when asked to extend the reach of the earlier (Taft-Hartley) Act's vague language to the limits which, read literally, the words might permit." *NLRB v. Drivers Local Union*, 362 U.S. 274, 291-292 (1960); *NLRB v. Allis-Chalmers Mfg. Co., supra*, 388 U.S. at 194.

and 603(a) of the Landrum-Griffin Act, 29 U.S.C. §§ 413, 483, 523(a). Section 103 provides that preexisting state laws are not affected by Title I of the Act, the Bill of Rights of union members.[4] Similarly, Section 403 prescribes that "[e]xisting rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by" Title IV, which regulates internal union elections. Section 403 thus specifically allows for suits in state courts to enforce rights granted by union constitutions.[5] Finally, Section 603(a) prescribes that, unless expressly provided otherwise, the Act was not intended to "take away any right or bar any remedy to which [union members] are entitled under such other Federal law or law of any state."

In fact one commentator recognized that there may be overlapping rights and remedies under state and federal law. He concluded that state courts interpret union constitutions. Indeed, he opined "the major task of state law is to enforce compliance with the union's own rules." Summers, *Preemption and The Labor Reform Act—Dual Rights & Remedies*, 22 Ohio St. L.J. 119, 144. There is no judicial or legislative indication that Congress recognized the existence, much less intended to preserve, any federal jurisdiction with respect to enforcement of union constitutions by union members under § 301.

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[4] Senator Morse and Representative Teller both expressed opposition to the Congressional refusal to preempt state law. II Legislature History of the Labor-Management Reporting and Disclosure Act of 1959, 1415, 1624.

[5] *Rota v. BRAC*, 489 F.2d 998, 1004 (7th Cir. 1973) (Judge, now Justice, Stevens); *cert. denied*, 414 U.S. 1144; *Calhoon v. Harvey*, 379 U.S. 134, 145-146 (1964) (Stewart, J., concurring). *See also* Note, *Union Elections and the LMRDA's Thirteen Years of Use and Abuse*, 81 Yale L. J. 407, 555 (1972).

C. A Union Member's Relationship With His Union Creates A Separate Contract Not Intended By Congress To Be Actionable Under § 301.

In 1981, the Court held that a union constitution embodies a "contract between labor organizations" conferring § 301 jurisdiction under which a labor organization may sue another in federal court for violation of their contractual obligations to one another. *Plumbers*, *supra*. The Court noted that the Courts of Appeals were unanimous in finding that a union constitution can be a "contract between labor organizations" within the meaning of § 301(a). *Id.* at 620. The Court further discussed the prevailing state law view that a union constitution can create a contract between members and a union. The Court particularly noted the state law view, widely held around the time § 301 was enacted, that a union constitution could embody a contract between parent and local unions. *Id.* at 621. The Court noted the dearth of legislative history regarding the "contracts between labor organizations" provision of § 301(a), and stated that:

> It is no doubt true that the primary purpose of the Taft-Hartley Act was to "promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process." *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962); see *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 452-455 (1957).

Id. at 623. The Court went on to find that:

> Surely Congress could conclude that the enforcement of the terms of union constitutions—documents that prescribe the legal relationship and the rights and obligations *between the parent and affiliated locals*—would contribute to the achievement of labor stability.

Id. at 624. (Emphasis added). The Court thus found that there is § 301 jurisdiction for such suits. The Court did not decide, however, whether an individual union

member could bring suit on a union constitution under § 301. *Id.* at 627, n.16. It is submitted herein that such a reservation was well founded, and that the Court should now find that § 301(a) creates no cause of action for an individual suing his union for an alleged breach of its constitution.

This Court has recognized that, unlike collective bargaining agreements, union constitutions are "contracts that are said to be implied by law." *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 300 (1971). Different aspects of a union constitution give rise to differing implied contracts. As this Court noted:

> We have also noted that the prevailing state-law view is that a union constitution is a contract. *Machinists v. Gonzales*, 356 U.S. 617, 618-619 (1958) (discussing *that aspect of union constitution constituting a contract between members and union*).

Plumbers at 621. (Emphasis added). The Court in *Plumbers* noted that the prevailing state law view, around the time of the passage of the Taft-Hartley Act, was that the union constitution could embody a contract between a parent labor organization and its local unions. *Id.* at 621.

A review of the state law cases cited by the Court in *Plumbers* demonstrates that the relationship between a parent union and its locals is just one of the implied contracts supported in part by a union constitution. Often, that implied contractual relationship was based upon the union constitution plus other documents and activities, such as acceptance by the local of a charter by the international union. *Locals 1140 and 1145 v. United Electrical, Radio and Machine Workers of America*, 232 Minn. 217, 45 N.W. 2d 498 (1950); *Local 13013, District 50, U.M.W. v. Chikra*, 86 Ohio App. 41, 90 NE2d 154 (1949); *Textile Workers Local 204 v. Federal Labor Union No. 21500*, 240 Ala. 239, 198 1So. 606 (1940); *Alexion v. Tollingsworth*, 239 N.Y. 91, 43 N.E. 2d 825 (1942). That, however, was only one of the implied contracts found around the time of the enactment of Taft-Hartley to be implied from portions of a union constitution. For example, *Chikra, supra*, notes that a union constitution comprised part of a contract "between the members" and also a contract between a parent union and its subordinate bodies. *Id.* 86 Ohio App. at 49. *Alexion, supra*, found contracts among the members and the union, and between the international union and its locals. *Id.*, 289 N.Y. at 96-97.

Prior to passage of the Taft-Hartley Act, three distinct contracts were implied in whole or in part by a union constitution: a contract among the members *inter se*, a contract between the members and the union, and a contract between the local and the international union. *Harris v. Geier*, 112 N.J. Eq. 99, 164 A. 50 (1932). *See also*, 87 C.J.S., Trade Unions, §§ 42-43, pp. 836-842 (1954). Decidedly absent at the time of the passage of the Taft-Hartley Act was any line of cases viewing individual union members as third-party beneficiaries of the implied contracts between their international and local unions. It is submitted that by no leap of faith can it be found that Congress intended, in enacting § 301, to create such a cause of action.

The Court in *Plumbers* noted the lack of legislative history regarding the "contracts between labor organizations" provision of § 301. *Id.* at 623. The Court found that enforcing the contractual obligations of parent and local unions toward one another could have been found by Congress to contribute to the achievement of industrial stability. *Id.* at 624. Certainly, the state cases cited by the Court would bear this out. *Id.* at 621-22. Each of the cited cases involved situations wherein local unions were either attempting to disaffiliate from their parent international, or to both disaffiliate with one international and to join another. *Locals 1140 and 1145, supra*; *Chikra, supra*; *Textile Workers Local 204, supra*; *Alexion, supra; International Union of United Brewery,*

Flour, Cereal, Soft Drink and Distillery Workers of America CIO v. Becherer, 4 N.J. Super. 456, 67 A.2d 900, *cert. denied*, 3 N.J. 374, 70 A.2d 537 (1949); *Bridgeport Brass Workers Union, Local 320 of the International Union of Mine, Mill, and Smelter Workers v. Smith*, 15 Conn. Supp. 505, (Super. Ct. 1948) *aff'd* 136 Conn. 654 (1950). Such cases had a clear and obvious effect upon industrial stability. Employers, uncertain as to which of two competing entities represented their employees, would be disrupted, both by the legal uncertainty and by the preoccupation of their employees. Similarly, in the situation underlying *Plumbers*, contractors would be thrown into disarray by competing jurisdictional claims of locals from the same national union.

None of this can be said, however, where an individual union member sues his union on a claim under the union constitution. It is submitted that, at a period in history when provisions of union constitutions were said to imply a contract between the individual and his union, Congress did not inted to confer federal jurisdiction on suits by individual member by including the "contracts between labor organizations" clause in § 301(a). Surely, it would not have taken such a step without considerable deliberation, and, the lack of legislative history regarding the above provision cautions against such an interpretation, particularly in light of the legislative history of the Taft-Hartley Act which suggests a disinclination to interfere in the internal affairs of unions. *See, e.g., Plumbers* at 625 n.12; *NLRB v. Allis-Chalmers Mfg. Co., supra* at 184. Simply put, a union member is not a "third party beneficiary" of a contract between two labor organizations.

It is here where the petitioner's analogy to *Smith v. Evening News Assn*, 371 U.S. 195 (1962) breaks down. *Smith* involved a collective bargaining agreement which, at the time § 301 was enacted, was recognized as an explicit contract between an employer and a labor organization. Individual employees were not considered parties to such agreements. They were, however, third party beneficiaries.

Union members, however, are parties to contracts implied under the union's constitution. *Machinists v. Gonzales, supra* at 618. The Court, in the context of a preemption analysis, has noted the inapplicability of *Smith* to disputes arising under a union constitution:

> The legislative determination that courts are fully competent to resolve labor relations disputes through focusing on the terms of a collective bargaining agreement cannot be said to sweep within it the same conclusion with regard to the terms of union-employee contracts that are said to be implied in law. That is why the principle of *Smith v. Evening News* is applicable only to those disputes that are governed by the terms of the collective bargaining agreement itself.

Lockridge, supra, 403 U.S. at 300-301.

An individual has no more right to sue his union under § 301 on his implied contract than he has to sue an employer on an individual contract of employment. Neither situation was contemplated by Congress in enacting § 301. That is why the *Gonzales* Court stated that "[t]he protection of union members in their rights as members has not been undertaken by federal law, and indeed the assertion of any such power has been denied." 356 U.S. at 620.

The Court in *Plumbers* rejected the "significant impact" on labor relations test that had been applied by several courts of appeals, noting that such *ad hoc* judgments on jurisdictional sufficiency were belied by the language of § 301(a). Given the Court's determination that Congress could have concluded that labor stability would be enhanced by the ability of unions to enforce contracts made between themselves, no such ad hoc review would be appropriate because all such disputes would raise a

federal question within the intent of the Taft-Hartley Act.

Despite its insufficiencies, the "significant impact" test was aimed at assuring that a federal question arose in § 301(a) suits arising under union constitutions. *Plumbers* taught us that all such suits, when between labor organizations, raise a federal question.

Since the decision in *Plumbers*, the "significant impact" test has also been abandoned by courts of appeals that have found that an individual has a right under § 301 to sue his union on the union constitution. *Kinney v. IBEW.* 669 F.2d 1222 (9th Cir. 1981); *Lewis v. Teamsters Local 771*, 826 F.2d 1310 (3d Cir. 1987). This suggests that a federal question is always raised when a union member make a claim against his union based on the union's constitution. To reach such a conclusion, forty-four years after enactment of the Taft-Hartley Act, requires an enormous leap of faith.

Twelve years after the enactment of the Taft-Hartley Act, Congress enacted the Labor-Management Reporting And Disclosure Act, 29 U.S.C. § 401 *et seq.* (LMRDA). Although courts are hesitant to infer legislative history from the actions of subsequent legislatures "[c]ourts may properly take into account the later [LMRDA] Act when asked to extend the reach of the earlier [Taft-Hartley] Act's vague language. . ." *NLRB v. Drivers Local* 639, 362 U.S. 274, 291-292 (1960). The LMRDA was the first comprehensive regulation by Congress of the conduct of internal union affairs. *NLRB v. Allis Chalmers Mfg. Co., supra*, at 193.

As petitioner points out in his brief, the LMRDA, in addition to its other provisions, federalizes certain aspects of union constitutions. Petitioner states:

> A further problem arises because questions of union constitutional interpretation are often intertwined with the enforcement of federal labor statutes. In

the LMRDA alone, for example, union constitutional issues are implicated in making decisions under four of the five substantive titles. In Title I, Sections 101(a)(1) and 101(a)(2) both subject the rights they create—the equal right to vote and the rights of free speech—to "reasonable rules" in the union's constitution and bylaws; certain dues claims under Section 101(a)(3)(B) turn on the presence of authority in the union constitution. In Title III, trusteeship may only be imposed in accordance with the union's constitution, Section 302, and the presumption of validity of a trusteeship depends on whether it has been imposed consistent with the requirements of the union's constitution. Section 304(c). In Title IV, unions are required to comply with their own constitutions regarding elections, Sections 401(e) and (f), and a variety of rights, such as the rights of every member in good standing to run for office, Section 401(e), are made subject to restrictions in the union's constitution if those restrictions are reasonable. And the fiduciary obligation codified by Title V requires, in part, that a union's funds be expended in accordance with its constitution. Section 501(a).

[Pet. Br. p. 27].

Thus, twelve years following the enactment of § 301, Congress specified areas of union constitutions which were appropriate for federal inquiry pursuant to lawsuits by individual members. These aspects of inquiry are appropriate not as part of the development of a federal common law of individual rights under union constitutions but as a test of a union's compliance with specific statutory responsibilities specified in the LMRDA.

Petitioner has noted "it is not uncommon for the L.M.R.D.A. claim to be accompanied by a claim for breach of the union constitution." [Pet. Br. at 27]. Indeed, such is the situation in the case at hand. Rather than supporting creation of a new federal cause of action, however, this reality militates against it.

The Sixth Circuit Court of Appeals found this to be the case in *Trail v. Teamsters*, 542 F.2d 961 (6th Cir. 1976). The *Trail* court noted that Congress and the courts had provided specific redress for the rights of individual union members through the LMRDA and through suits alleging a violation of the duty of fair representation. *Id.* at 968.

If a federal cause of action is recognized under § 301 for union members to sue their unions under the union's constitution, it does not appear that there would be any reason in law or logic that they could not also sue union officers under the union constitution, or even non-officer fellow union members. The most trivial and remote disputes, without any connection to labor peace and stability, would be federalized. Indeed, the case at hand originates with such a situation, with two brothers whose dispute has spilled over, as an ancillary matter, into their local union.

D. The Federal Courts Are Not An Appropriate Forum For Every Dispute That May Arise Between A Union Member And His Union Under The Union's Constitution.

Section 301 was not intended to "federalize" each and every provision of a union constitution. Claims by members against their union based on its constitution were cognizable in state courts prior to the enactment of § 301 in 1947; prior to the enactment of Landrum Griffin in 1959; and after the enactment of these Acts, up to today.

Petitioner's argument, if adopted by the Court, effectively federalizes all suits by union members on their union constitutions, even though many such suits traditionally have been governed by state law. *Machinists v. Gonzales, supra.* Cf. *Motor Coach Employees v. Lockridge, supra.* Petitioner thus would have the Court reject established precedent and depart from the traditional approach of applying preemption principles to the state

law claims that are brought by union members against their unions. *Steelworkers v. Rawson*, 110 S.Ct. 1904 (1990); *Electrical Workers v. Hechler*, 481 U.S. 851 (1987); *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985); *International Union of Operating Engineers Local 406 v. NLRB*, 460 U.S. 669 (1983); *Farmer v. Carpenters*, 430 U.S. 290 (1977); *Lockridge, supra*; *Plumbers v. Borden*, 373 U.S. 690 (1963); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959); and *Gonzales, supra.*

In the instant case, the Sixth Circuit Court of Appeals addressed petitioner's assertion that his claim under the union constitution, absent jurisdiction under § 301, could be prosecuted as a pendent state law breach of contract claim. The Sixth Circuit rejected this assertion by finding that any such claim is preempted by § 301.[6] The court of appeals' holding properly applied preemption principles to the petitioner's breach of contract action, which cited the union constitution's requirement that local unions comply with their collective bargaining agreements. (JA-12). Insofar as petitioner alleged that respondents failed to comply with the hiring hall referral procedure established in the local union's collective bargaining agreements (JA 8-10) and such alleged failure provided the primary basis for petitioner's breach of contract claim under the union constitution, such claim is "inextricably intertwined with consideration of the terms of the [union's] labor contract [s]." *Allis-Chalmers Corp. v. Lueck, supra* at 213. As a state law claim, therefore, petitioner's cause of action under the union constitution

[6] Petitioner has not raised in this appeal the question of whether his claim under the union constitution, if determined to be a breach of contract claim under state law, is preempted by federal law. The Petitioner thus apparently concedes that the Sixth Circuit Court of Appeals' holding on this question was correct—i.e., that if the Petitioner's claim under the union constitution constitutes a pendent state law claim for breach of contract, such claim is preempted under § 301 of L.M.R.A.

properly was determined to be preempted under § 301. *Electrical Workers v. Hechler, supra; Lueck, supra;* see also, *Steelworkers v. Rawson, supra.* Further, to the extent that petitioner's claim under the constitution is based upon allegations of conduct related to the union's hiring hall, which conduct is "actually or arguably protected or prohibited by the NLRA", *International Union of Operating Engineers Local 406, supra,* at 676, such state law claim would also be preempted under this Court's holding in *San Diego Building Trades Council v. Garmon, supra.* See *Plumbers v. Borden, supra;* cf. *Breininger v. Sheet Metal Workers Local 6,* 110 S.Ct. 424 (1989); and *Teamsters Local 357 v.* NLRB, 365 U.S. 667 (1961).

In other cases, it has been determined that the preemption doctrine does not apply. See, e.g. *Farmer v. Carpenters, supra; Linn v. Plant Guard Workers,* 383 U.S. 53 (1986). Where a certain activity was "a merely peripheral concern of the Labor Management Relations Act . . . [or] touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, [the Court] could not infer that Congress had deprived the states of the power to act." *Garmon, supra,* at 243-44.

Should the Court determine that all suits brought by union members under their union constitutions are subject to federal jurisdiction under § 301, a case-by-case determination of whether such suits are preempted will no longer be necessary. However, the federal courts will be open for litigation of internal union disputes that have no impact on collective bargaining relationships or federal labor law. Such was not the intent of Congress in enacting § 301, and, while petitioner's approach to this issue (i.e., the federalization of all claims based upon alleged violations of union constitutions) may provide the simplest "solution to case-by-case questions of preemption, there is simply no legislative history to support this approach. Rather, a long line of precedent supports the application of state law (in state court sor, pursuant to pendent jurisdiction, in federal court) for all claims by union members that are based upon their union constitution and which are not preempted.[7]

Federalizing union constitutions would involve the federal judiciary in endless minutia, where members are suing the union or a union officer or a fellow member. For example, petitioner claimed that he was subjected to charges that were filed against him by his brother, Buck (JA pp. 9-10). No action was even taken by the Union on these charges, and this claim, which was dismissed by the lower court (JA 9-10, Pet. App. A-6, A-7), is not before this court. These charges merely constituted a continuation of a fraternal feud, which happened to involve one brother who was a union officer. The incident ended abruptly in a shouting match between the brothers (Pet. App. A-7); no action was taken by the Union; and no economic harm was suffered by the petitioner.

A cursory review of the IBEW Constitution reveals many other potential inane disputes that could result in federal litigation. Article XVII, Section 2 provides in pertinent part that local union meetings be adjourned no later than 11:00 p.m. (JA-22). If a discussion on payment of a bill begins at 10:30 and does not conclude until 11:15, when a vote is taken to authorize payment of the bill, should a member be allowed to sue in federal court to prevent the payment of such bill? Certainly Congress never intended to confer federal jurisdiction over such disputes, which are unrelated to collective bar-

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[7] In this area, this Court has not slavishly pursued a policy of uniformity. In *Reed v. UTU,* 488 U.S. 319 (1989) a uniform six-month federal statute of limitations for LMRDA § 101(a)(2) claims, following *DelCostello v. Teamsters,* 462 U.S. 151 (1983), was rejected in favor of borrowing from the state general or residual personal injury statutes necessitating a state-by-state determination.

gaining or the areas of labor relations that are otherwise subject to federal regulations.

Or, consider the duties of the President, among which are that he conduct an orderly meeting and "have removed from the meeting . . . anyone who disturbs the harmony or peace of a meeting." (JA-29, Article XIX). If the membership is debating a proposed collective bargaining agreement and some of the discussion rises to a level of shouting, should a member be allowed to sue the union or the president in federal court for specific performance of this provision? Potentially, the vote on the collective bargaining agreement could be challenged solely on this constitutional provision.

Of course, the provisions of union constitutions should not be federalized. This could cause the courts to become enmeshed in the trivialites of the daily affairs of unions in a way not contemplated by Taft-Hartley or Landrum-Griffin. In 1959 Landrum-Griffin decreed that some internal affairs of unions, *vis a vis* their members, be reviewed by the federal judiciary, e.g., Title I, 29 U.S.C. 401 et seq. At the same time, it recognized that other internal affairs would continue to be reviewed in state courts, 29 U.S.C. 413. This distinction has been recognized subsequent to *Plumbers*. *See Gable v. Iron Workers*, 695 F. Supp. 1174 (N.D. Ga. 1988), wherein a local's business agent sued on the union's By-Laws for three weeks of vacation pay, and the Court held there was no § 301 jurisdiction.

CONCLUSION

Based upon the foregoing analysis, it is respectfully submitted that Congress never intended, in 1947, to confer federal jurisdiction under § 301 over suits by individual union members based upon their union constitution. It is submitted that there is no reason arising out of the case at hand for the Court to expand the interpretation of § 301 to encompass such a cause of action. The Court of Appeals' decision on this issue should be affirmed.

Respectfully submitted,

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